



DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2021-OESE-0148]

Final Definition--Supporting Effective Educator Development
Program

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Final definition.

SUMMARY: The Department of Education (Department)
announces a definition under the Supporting Effective
Educator Development (SEED) program, Assistance Listing
Number 84.423A. We may use this definition for
competitions in fiscal year (FY) 2022 and later years. We
take this action to clarify the conditions under which a
nonprofit entity may be defined as a national entity.

DATES: This definition is effective [INSERT DATE 30 DAYS
AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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(TDD) or a text telephone (TTY), call the Federal Relay
Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The SEED program provides funding to increase the number of highly effective educators by supporting the implementation of evidence-based practices that prepare, develop, or enhance the skills of educators. SEED grants allow eligible entities to develop, expand, and evaluate practices that can serve as models to be sustained and disseminated.

Program Authority: Section 2242 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6672).

We published a notice of proposed definition (NPP) for this program in the *Federal Register* on December 15, 2021 (86 FR 71207). The NPP contained background information and our reasons for proposing the definition.

Except for minor editorial and technical revisions, there are no differences between the proposed definition and the final definition.

Public Comment: In response to our invitation in the NPP, we received seven comments, six of which were relevant to the proposed definition and considered in the analysis. Of the six comments addressing the proposed definition, three expressed support for the definition. Of these three comments, one commenter offered a specific recommendation for revising the definition, and the other two commenters raised concerns that the definition de-emphasized the SEED program's requirement that national nonprofit entities

demonstrate evidence of educational effectiveness. The remaining three comments expressed disagreement with the definition, arguing that the definition would be too restrictive and would limit the potential pool of applicants from the nonprofit sector. Two commenters raised concerns that the definition would impose restrictions on nonprofit entities but not on institutions of higher education, which are also eligible applicants under the SEED program. Responses to these comments are found in the Analysis of the Comments and Changes below.

Analysis of the Comments and Changes: An analysis of the comments and of any changes to the proposed definition follows. Generally, we do not address technical and other minor changes, or suggested changes we are not authorized to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the NPP. We group major issues according to subject.

Comment: In response to the proposed definition of "national nonprofit entity," multiple commenters expressed general support for the definition. However, one commenter, while expressing general support for the definition, suggested a change to the language to specify that the national nonprofit entity provides services to teachers, principals, or *other* school leaders, rather than teachers, principals, and school leaders.

Discussion: We appreciate the comment regarding the educators to be served by the national nonprofit entity and recognize the significance of the specific area they recommend emphasizing in the definition. Upon further review, we concur with the comment and recognize that this revision to the definition is consistent with the purposes of the program in section 2242(a) of the ESEA, which generally contemplate that services be provided to teachers, principals, or other school leaders. We are also clarifying in the definition that "school leader" has the meaning ascribed it in section 8101 of the ESEA.

Changes: We have revised paragraph (2) of the definition to clarify that a national nonprofit entity serves teachers, principals, or *other* school leaders and that "school leader" has the meaning ascribed it in section 8101 of the ESEA.

Comment: Multiple commenters opposed the definition's requirement that a nonprofit entity provide services in three or more States to be qualified as national in scope. The commenters noted that the requirement seemed to narrow the pool of eligible applicants unnecessarily. The commenters suggested that the Department focus instead on the overall impact of a nonprofit entity and look at the number of educators served by an entity rather than quantifying its geographic reach.

Discussion: We appreciate the comments on the requirement that nonprofit entities serve educators in three or more States to be considered national in scope. While we recognize the commenters' concerns about potentially narrowing the pool of eligible entities and the impact of the SEED program, we think that the definition provides needed clarity that is currently missing from the statute. The SEED statute, by modifying the term "nonprofit" with the term "national," contemplates that only nonprofit entities that are national in scope receive awards. To give meaning to this requirement, the Department has determined that a nonprofit entity must have tangible effects on educators in multiple States to be deemed national. At the same time, the Department shares the commenters' concerns about unduly narrowing the pool of eligible applicants and has addressed that concern by setting a threshold of three or more States, a threshold that it deems both reasonable and easy to document in SEED applications. This requirement provides clarity and transparency for applicants responding to the SEED program but is not unduly burdensome.

Changes: None.

Comment: Multiple commenters raised concern that the provision on serving educators in three or more States only applies to nonprofit entities but does not apply to institutions of higher education (IHEs). The commenters

argued that this approach was inconsistent and imposes unreasonable restrictions on one class of applicants but not the other.

Discussion: The SEED statute does not require IHEs to have a national scope or presence.

Changes: None.

Comment: Multiple commenters expressed concern that the definition appears to move the SEED program away from the statutory requirement that nonprofit entities have a demonstrated record of raising student academic achievement, graduation rates, and rates of higher education attendance, matriculation, or completion, or of effectiveness in providing preparation and professional development activities and programs for teachers, principals, or other school leaders.

Discussion: The definition does not remove any statutory requirements; rather, it clarifies that eligible nonprofit entities, in addition to demonstrating the characteristics noted by commenters, must carry out their work in three or more States.

Changes: None.

FINAL DEFINITION:

The Department establishes the following definition for use in any SEED competition in which the term "national nonprofit entity" is used in connection with the eligibility requirement in section 2242 of the ESEA:

National nonprofit entity means an entity that--

(a) Meets the definition of "nonprofit" under 34 CFR 77.1(c); and

(b) Is of national scope, which requires that the entity--

(1) Provides services in three or more States; and

(2) Demonstrates a proven record of serving or benefitting teachers, principals, or other school leaders (as defined in section 8101 of the ESEA) across these States.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use this definition, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to

result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned

determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that

might result from technological innovation or anticipated behavioral changes.”

We are issuing the final definition only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on an analysis of anticipated costs and benefits, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Regulatory Flexibility Act Certification:

The Secretary certifies that this regulatory action does not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently

owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000. The small entities that this regulatory action will affect are nonprofit organizations and IHEs. We believe that the costs imposed on an applicant by the final definition will be limited to paperwork burden related to preparing an application and that the benefits of the final definition will outweigh any costs incurred by the applicant. Participation in the SEED program is voluntary. We expect that in determining whether to apply for SEED program funds, an eligible entity will evaluate the costs of preparing an application and weigh them against the benefits likely to be achieved by receiving a SEED program grant. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application. Therefore, we believe that the definition will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995: The final definition contains information collection requirements that are approved by OMB under OMB control number 1894-0006; the

final definition does not affect the currently approved data collection.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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